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# SUPER LAW GROUP, LLC

May 3, 2017

**Via Certified Mail, Return Receipt Requested**

Almar Supplies, Inc.  
Rossana Bortone, CEO  
248-22 Brookville Boulevard  
Queens, NY 11422

BML Consulting, LLC  
248-22 Brookville Boulevard  
Queens, NY 11422

Almar Supplies, Inc.  
Rossana Bortone, CEO  
57-05 47th Street  
Maspeth, NY 11378

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

We are writing on behalf of Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper) (“Baykeeper”)<sup>1</sup> to notify you of Baykeeper’s intent to file suit against Almar Supplies, Inc., Rossana Bortone, and BML Consulting, LLC (collectively, “Almar”), pursuant to Section 505(a) of the federal Clean Water Act (“CWA”)<sup>2</sup> for violations of the CWA.

Baykeeper intends to file suit, as an organization and on behalf of its adversely affected members, in the United States District Court for the Eastern District of New York seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this letter.<sup>3</sup>

Baykeeper intends to take legal action because Almar is discharging polluted stormwater to the waters of the United States without a permit, at the Almar facility (“the Facility”), located near Jamaica Bay. These discharges violate Sections 301(a) and 402(p)(2)(B) of the Clean Water Act.<sup>4</sup> Further, Almar has not applied for coverage under, nor complied with the conditions of, an individual National Pollutant Discharge Elimination System (“NPDES”) permit or the General

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<sup>1</sup> Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper), is a non-profit public interest 501(c)(3) corporation, whose mission is to protect, preserve, and restore the ecological integrity and productivity of the Hudson-Raritan Estuary through enforcement, field work and community action. Baykeeper has approximately 350 members in the New York and New Jersey region, many of whom use and enjoy Jamaica Bay, which is polluted by industrial stormwater runoff discharged by facilities that are or should be covered by the General Permit.

<sup>2</sup> 33 U.S.C. § 1365(a). We refer to statutory provisions by their section in the Clean Water Act and provide the parallel citation to the United States Code only on first reference.

<sup>3</sup> See 40 C.F.R. § 135.2(a)(3)(c) (notice of intent to file suit is deemed to have been served on the postmark date).

<sup>4</sup> 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Permit for the Discharge of Stormwater Associated with Industrial Activity (“General Permit”)<sup>5</sup> issued by the New York State Department of Environmental Conservation (“DEC”), in violation of Sections 402(p), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1).

The street address of the Facility is provided in government records as 248-22 Brookville Boulevard, Queens, NY, 11422. For clarity, the Facility location can be uniquely identified by tax block and lot number as block 13914, lot 1 in Queens County. The Water of the United States that is polluted by the Facility is Jamaica Bay.

## I.

### **BACKGROUND**

With every rainfall event, hundreds of millions of gallons of polluted rainwater pour into New York Harbor, Long Island Sound, and other receiving waters. The consensus among agencies and water quality specialists is that stormwater pollution accounts for more than half of the total pollution entering the marine environment each year.

DEC has designated more than 7,000 river miles, 319,000 acres of larger waterbodies, 940 square miles of bays and estuaries, and 592 miles of Great Lakes shoreline in the State as “impaired,” or not meeting water quality standards, and unable to support beneficial uses such as fish habitat and water contact recreation.<sup>6</sup> For the overwhelming majority of water bodies listed as impaired, stormwater runoff is cited as a primary source of the pollutants causing the impairment. Contaminated stormwater discharges can and must be controlled in order to improve the quality and health of these waterbodies.

Stormwater discharges flow from the Facility directly into Jamaica Bay via the storm sewers adjacent to the Facility. DEC has classified Jamaica Bay as a class “SB” waterbody.<sup>7</sup> Under New York’s Water Quality Standards, a waterbody that is designated as SB is best suited for contact recreation and fishing uses.<sup>8</sup> SB waters should be suitable for fish, shellfish, and wildlife propagation and survival. The New York Water Quality Standards also set numeric and narrative criteria for different water pollution parameters including dissolved oxygen, oil and grease, suspended and settleable solids, bacteria (pathogens), pH, temperature, nutrients, and

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<sup>5</sup> New York State Department of Environmental Conservation, *SPDES Multi-Sector General Permit For Stormwater Discharges Associated With Industrial Activity*, Permit No. GP-0-12-001, (hereinafter “General Permit”), available at <http://www.dec.ny.gov/chemical/9009.html>. This General Permit replaces earlier general permits for the discharge of stormwater associated with industrial activity. It became effective on October 1, 2012, and will expire on September 30, 2017.

<sup>6</sup> See EPA, Watershed Assessment, Tracking and Environmental Results, New York Assessment Data for 2012, [http://ofmpub.epa.gov/waters10/attains\\_state.report\\_control?p\\_state=NY&p\\_cycle=2012&p\\_report\\_type=A](http://ofmpub.epa.gov/waters10/attains_state.report_control?p_state=NY&p_cycle=2012&p_report_type=A) (last visited Oct. 14, 2014).

<sup>7</sup> See 6 N.Y.C.R.R. § 891.6

<sup>8</sup> See 6 N.Y.C.R.R. § 701.11

others. A waterbody must meet these numeric and narrative criteria in order to support its designated uses.<sup>9</sup>

Stormwater discharges from the Facility introduce a host of industrial pollutants into Jamaica Bay. The Clean Water Act provides a regulatory regime for mitigating the worst impacts of industrial stormwater pollution, but Almar's site is not in compliance with the basic requirements of that regime.

## II.

### **STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED AND ACTIVITIES ALLEGED TO BE VIOLATIONS**

#### **A. Almar is Discharging Stormwater Associated with Industrial Activity to Waters of the United States without a Permit.**

The CWA prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.<sup>10</sup> Almar's industrial activity at the Facility has caused and continues to cause a "discharge of pollutants" within the meaning of Section 502(12) of the CWA<sup>11</sup> and a "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14) from the Facilities on each and every day that there has been a rain event of more than 0.1 inches.<sup>12</sup> The Facility has exposed and continues to expose industrial pollutants to stormwater, at a minimum, (a) maintaining trucks and other vehicles onsite and storing such vehicles outside or otherwise exposing them to the elements, and (b) from vehicles entering and leaving the Facility that tracks pollutants off site. During precipitation events (including runoff from rainfall and snow or ice melt events), pollutants enter storm drains near the Facility and discharge into Jamaica Bay. Baykeeper has also observed the intentional pumping of industrial stormwater into the street where those same storm drains are located.

Almar's activities at the Facility include but are not limited to the fueling, maintenance and storage of trucks. Baykeeper has observed vehicles awaiting repairs, under repair, maintenance equipment, including tires and machinery, stored uncovered and exposed to precipitation. These activities include operation and storage of industrial equipment and much of this activity is conducted outdoors.

In carrying out these activities, all of these pollution sources are exposed to precipitation and snowmelt. These pollution sources may release fuel, oil, lubricants, PCBs, PAHs, an array of metals, pH-affecting substances and chemical residues. These toxic pollutants are often

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<sup>9</sup> See 6 N.Y.C.R.R. §§ 702, 703.

<sup>10</sup> See CWA §§ 301(a) and 402.

<sup>11</sup> 33 U.S.C. § 1362(12).

<sup>12</sup> EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity. See, e.g., 40 C.F.R. § 122.26(c)(i)(E)(6) (using 0.1 inches as the distinguishing threshold of a storm event).

generated in the form of small particulate matter, which settles on the ground and other surfaces that are exposed to stormwater and non-stormwater flows.

Because Almar fails to adequately shelter and otherwise contain these materials to prevent their release to the environment, precipitation falls on and flows over exposed materials, fluids, and particulates. Polluted stormwater runs off site and into adjacent storm drains and into Jamaica Bay. Vehicles at the Facility track dust, particulate matter, and other contaminants to areas on and off the premises from which these pollutants can enter stormwater and, ultimately, Jamaica Bay.

Jamaica Bay is a “water of the United States,” as defined in 40 C.F.R. § 122.2 and, therefore a, “navigable water” as defined in Section 502(7) of the CWA. Almar does not have a NPDES permit for these discharges of pollutants. Thus, Almar is discharging polluted industrial stormwater into navigable waters of the United States without the permit required under Sections 301 and 402 of the CWA.

**B. Almar is Violating the Clean Water Act by Failing to Apply for NPDES Permit Coverage.**

At the Facility, Almar maintains a fleet of trucks which it operates to deliver landscaping, masonry, and stone materials. Accordingly, the principal industrial activity at the Facility is motor freight transportation and warehousing, which is classified under Standard Industrial Classification (“SIC”) Code 4212 and is an industrial activity included in Sector P of the General Permit.

To be eligible to discharge stormwater associated with its industrial trucking operations under the General Permit, Almar must submit to DEC a registration form called a “Notice of Intent.”<sup>13</sup> Notice of Intent forms are available online from DEC.<sup>14</sup> To register, Almar is required, among other things, to list all stormwater discharges, including descriptions of the industrial activities taking place in the drainage area of each discharge and the acreage of industrial activity exposed to stormwater, the separate storm sewer system or immediate surface water body or wetland to which site runoff discharges, and the name of the watershed and nearest waterbody to which the site ultimately discharges and information about whether the receiving waters are impaired.<sup>15</sup>

<sup>13</sup> See General Permit, Part I.E.3. In notifying Almar that the Clean Water Act requires coverage under and compliance with a valid NPDES permit in order to lawfully discharge, and that submission of a Notice of Intent to DEC is required in order to obtain coverage under the General Permit, Baykeeper does not concede that all of the activities conducted at the Facilities are necessarily eligible for coverage under that permit. For example, if a Facility is discharging process wastewater, such as wash water, or has any other polluted non-stormwater discharge that is not authorized by the General Permit, then an individual NPDES permit is required and the failure to obtain and comply with an individual NPDES permit for such discharges also violates CWA §§ 301(a) and 402(p). The conditions for eligibility to discharge under the General Permit are provided in Part I.C of the permit.

<sup>14</sup> See [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

<sup>15</sup> See Division of Water, NY DEC, *Notice of Intent For Stormwater Discharges Associated with Industrial Activity under the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit GP-6-12-001 (MSGP)* (2012), available at [http://www.dec.ny.gov/docs/water\\_pdf/gpnoi.pdf](http://www.dec.ny.gov/docs/water_pdf/gpnoi.pdf).

Almar has failed to prepare and file a Notice of Intent or an application for an individual permit.<sup>16</sup>

C. **Almar is Violating the Clean Water Act by Failing to Comply with the General Permit.**

As a discharger of stormwater associated with industrial activity, Almar must comply at all times with the requirements of the General Permit (or an individual permit).<sup>17</sup> By discharging stormwater associated with industrial activity at both Facilities, without complying with the General Permit, Almar is violating CWA Sections 301(a) and 402(a) and (p).<sup>18</sup> The main General Permit requirements that Almar has failed and continues to fail to meet are explained further below.

**1. Almar has not developed and implemented a Stormwater Pollution Prevention Plan at Either Facility.**

Before submitting a registration form, Almar must prepare, make available, and implement a Stormwater Pollution Prevention Plan ("SWPPP") in accordance with schedules established in the General Permit.<sup>19</sup> The SWPPP must identify potential sources of pollution that may affect the quality of stormwater discharges associated with industrial activity. Further, the SWPPP must describe and ensure the implementation of practices that minimize the discharge of pollutants in these discharges and that assure compliance with the other terms and conditions of the General Permit, including achievement of effluent limitations.<sup>20</sup>

Among other things, the SWPPP must include: a general site description, a general location map identifying the location of the facility and all receiving waters to which stormwater discharges, information related to a company stormwater pollution prevention team, a summary of potential pollutant sources, a description of control measures and best management practices, and schedules and procedures for implementation of control measures, monitoring and inspections.<sup>21</sup>

Almar has not developed and implemented a legally compliant SWPPP for the Facility, as required by Part III of the General Permit.<sup>22</sup>

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<sup>16</sup> A thorough search of EPA's Enforcement & Compliance History Online ("ECHO") database and DEC's records reveals that no Notice of Intent has been submitted for the Facility.

<sup>17</sup> This section discusses the compliance requirements of the General Permit. If Almar elects to seek coverage under individual NPDES permits instead, the conditions of those individual permits will be at least as strict as those of the General Permit, thus Almar will still be required to comply with all of the following.

<sup>18</sup> Sections 301(a) and 402(a) and (p) make it unlawful for Almar to discharge stormwater associated with industrial activity without first complying with all of the conditions established in a NPDES permit.

<sup>19</sup> See General Permit Part III.B.

<sup>20</sup> See General Permit Part III.A.

<sup>21</sup> See General Permit Part III.C.

<sup>22</sup> Baykeeper believes no SWPPPs exist. If a SWPPP exists at the Facility, then it is either facially inadequate or has not been fully and adequately implemented.

**2. Almar has not implemented control measures and Best Management Practices that are selected to meet best available technology standards.**

Almar cannot legally discharge stormwater under the General Permit from the Facility until Almar implements mandatory general and sector-specific control measures called Best Management Practices (“BMPs”) in order to minimize the discharge of pollutants from the Facility.<sup>23</sup> The selected measures must reduce the discharge of pollution from each Facility to the extent practicable through use of the best available technology for the industry.

The General Permit requires that “[t]he owner or operator must select, design, install, and implement control measures (including best management practices),” in accordance with good engineering practices, to meet the effluent limits contained in the permit.<sup>24</sup> The General Permit’s effluent limits include both numeric limits specific to certain sectors<sup>25</sup> and non-numeric technology-based effluent limits that apply to all facilities.<sup>26</sup> These non-numeric technology-based restrictions include minimizing the exposure of pollutants to stormwater<sup>27</sup> and minimizing the discharge of pollutants in stormwater<sup>28</sup> “to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”<sup>29</sup>

Almar has not minimized the discharge of pollution to the extent achievable by implementing control measures or BMPs that are technologically achievable and economically practicable and achievable in light of best industry practice, as required by Parts I.B.1 and VIII of the General Permit.

**3. Almar has not conducted routine site inspections or complied with monitoring, recordkeeping, and reporting requirements at the Facility.**

Almar must conduct an annual comprehensive site inspection and evaluation the Facility of areas where industrial materials or activities are exposed to precipitation or where spills and leaks have occurred within the past three years.<sup>30</sup> The inspection must ensure that all stormwater discharges

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<sup>23</sup> See General Permit Part I.B.1, *see also* Part VII (setting forth sector-specific control measures and practices).

<sup>24</sup> General Permit Part I.B.1.a. *See also* Part III.C.7 (“The SWPPP must document the location and type of BMPs installed and implemented at the facility to achieve the non-numeric effluent limits in Part I.B.1.a.(2) and where applicable in Part VIII, and the sector specific numeric effluent limitations in Part VIII.”).

<sup>25</sup> See General Permit, Part VIII.

<sup>26</sup> See General Permit, Part I.B.1.a.2.

<sup>27</sup> See General Permit, Part I.B.1.a.2.a.

<sup>28</sup> See General Permit, Part I.B.1.a.2.f.

<sup>29</sup> See General Permit, Part I.B.1 (“In the technology-based limits included below and in Part VIII, the term ‘minimize’ means reduce and/or eliminate to the extent achievable using control measures (including best management practices) that are technologically available and economically practicable and achievable in light of best industry practice.”).

<sup>30</sup> See General Permit, Part IV.A.1.

are adequately controlled and that all BMPs are functioning as expected.<sup>31</sup> Records of this inspection must be kept for five years.<sup>32</sup>

In addition, qualified facility personnel must carry out routine inspections at least quarterly.<sup>33</sup> During these inspections, personnel must evaluate conditions and maintenance needs of stormwater management devices, detect leaks and ensure the good condition of containers, evaluate the performance of the existing stormwater BMPs described in the SWPPP, and document any deficiencies in the implementation and/or adequacy of the SWPPP.<sup>34</sup> Such deficiencies must then be addressed through corrective actions.

The General Permit requires that all covered facilities conduct multiple types of analytical monitoring, and DEC may require additional individualized monitoring as well.<sup>35</sup> In particular, all facilities authorized under the General Permit must:

- collect and analyze stormwater samples for each outfall at least annually;<sup>36</sup>
- conduct visual monitoring of stormwater discharges at least quarterly;<sup>37</sup>
- perform an annual dry weather inspection to detect non-stormwater discharges;<sup>38</sup>
- inspect, sample and monitor discharges from coal pile runoff;<sup>39</sup>
- inspect, sample and monitor discharges from secondary containment structures and transfer areas;<sup>40</sup>
- document storm events during which any samples are taken;<sup>41</sup>
- document all of these monitoring activities;<sup>42</sup>
- keep records of the monitoring with the Facility's SWPPP;<sup>43</sup> and
- submit an annual report to DEC accompanied by a Discharge Monitoring Report detailing the results of all required stormwater samples, as well as reports that documents any instance of non-compliance with benchmarks or numeric effluent limitations.<sup>44</sup>

Because Almar engages in industrial activities associated under Sector P, sampling is required for:

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<sup>31</sup> See General Permit, Part IV.A.1.

<sup>32</sup> See General Permit, Part IV.A.2.

<sup>33</sup> See General Permit, Part III.C.7.b.2.

<sup>34</sup> See General Permit, Part III.C.7.b.1 and b.3.

<sup>35</sup> See General Permit, Part IV.B.3.

<sup>36</sup> See General Permit, Part IV.B.1.c (requiring at least annual collection and analysis of stormwater samples). See General Permit, Part IV.B.1.d, .e, .f, and .g for obligations to sample more frequently.

<sup>37</sup> See General Permit, Part IV.B.1.a.

<sup>38</sup> See General Permit, Part IV.B.1.b.

<sup>39</sup> See General Permit, Part IV.B.1.d.

<sup>40</sup> See General Permit, Part IV.B.1.f.

<sup>41</sup> See General Permit, Part IV.B.2.c.

<sup>42</sup> See, e.g., General Permit, Parts IV.B.1.a.8, IV.B.1.b.4, IV.B.1.c.9, see generally Part IV.E.

<sup>43</sup> See General Permit, Part IV.E.

<sup>44</sup> See General Permit, Part IV.B.1 and 2 and Part IV.C.

- Oil & Grease;
- Chemical Oxygen Demand;
- Benzene;
- Ethylbenzene;
- Toluene; and
- Xylene.<sup>45</sup>

Baykeeper is not necessarily aware of all industrial activities taking place at the Facility. To the extent that industrial activities other than the above are carried out at the Facility, other sampling may be required as well.<sup>46</sup> This notice provides Almar with sufficient information to identify the standards and limitations that apply to all categories of industrial activity.

Almar has failed at the Facility to conduct the required annual and other routine inspections, monitoring, and testing, as required by, at least, Parts III, IV, and VIII of the General Permit. Almar also has failed to retain records and submit monitoring reports to DEC pertaining to the Facility, as required by, at least, Parts IV and VIII of the General Permit.

**4. Almar has failed at the Facility to comply with additional requirements located in Part VIII of the General Permit.**

As noted above, the General Permit contains various requirements specific to Sector P. These requirements, some of which are referenced above, are collected in Part VIII of the General Permit. They include:

- A requirement to describe and assess in Almar's SWPPP the potential for the following to contribute pollutants to stormwater discharges:
  - On-site waste storage or disposal;
  - Dirt/gravel parking areas for vehicles awaiting maintenance; and,
  - Fueling areas.
- A requirement that the following areas/activities be included in all inspections:
  - Storage area for vehicles /equipment awaiting maintenance;
  - Fueling areas;
  - Indoor and outdoor vehicle/equipment maintenance areas;
  - Material storage areas;
  - Vehicle/equipment cleaning areas; and
  - Loading/unloading areas.

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<sup>45</sup> See General Permit, Part VIII, Sector P.

<sup>46</sup> See General Permit, Part VIII.

- A requirement that employee training take place, at a minimum, annually (once per calendar year) and address the following, as applicable:
  - Used oil and spent solvent management;
  - Fueling procedures;
  - General good housekeeping practices;
  - Proper painting procedures; and
  - Used battery management.
  
- A requirement that storage of vehicles and equipment awaiting maintenance with actual or potential fluid leaks be confined to designated areas (delineated on the site map). The SWPPP shall document considerations of the following BMPs (or their equivalents):
  - The use of drip pans under vehicles and equipment;
  - Indoor storage of vehicles and equipment;
  - Installation of berms or dikes;
  - Use of absorbents;
  - Roofing or covering storage areas; and
  - Cleaning pavement surface to remove oil and grease.
  
- A requirement that storage vessels of all materials (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) are maintained in good condition, so as to prevent contamination of stormwater, and plainly labelled (e.g., "used oil," "spent solvents," etc.). The SWPPP shall document considerations of the following storage-related BMPs (or their equivalents):
  - Indoor storage of the materials;
  - Installation of berms/dikes around the areas, minimizing runoff of stormwater to the areas;
  - Using dry cleanup methods; and
  - Treating and/or recycling the collected stormwater runoff.
  
- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of stormwater runoff from all areas used for vehicle/equipment cleaning. The SWPPP shall document considerations of the following BMPs (or their equivalents):
  - Performing all cleaning operations indoors;
  - Covering the cleaning operation;
  - Ensuring that all wash waters drain to a proper collection system (i.e., not the stormwater drainage system unless SPDES permitted); and,
  - Treating and/or recycling the collected stormwater runoff.

- A requirement that the SWPPP describe and provide for implementation of measures that prevent or minimize contamination of the stormwater runoff from all areas used for vehicle/equipment maintenance. The SWPPP shall document consideration of the following BMPs (or their equivalents):
  - Performing maintenance activities indoors; using drip pans;
  - Keeping an organized inventory of materials used in the shop;
  - Draining all parts of fluids prior to disposal;
  - Prohibiting wet clean up practices where the practices would result in the discharge of pollutants to stormwater drainage systems;
  - Using dry cleanup methods;
  - Treating and/or recycling collected stormwater runoff; and
  - Minimizing runoff/runoff of stormwater to maintenance areas.<sup>47</sup>

Almar's activity at Facility is included in the definition of industrial activity to which the CWA applies. Therefore, Almar must obtain coverage under and comply with the requirements of the General Permit, including those specific to Almar's industrial activities, as described in Part VIII and outlined above. Almar has failed to obtain coverage for the Facility under the General Permit and comply with these additional requirements.

#### **5. Almar is Clearly Violating the Clean Water Act at the Facility.**

In sum, Almar's discharge of stormwater associated with industrial activities without a permit, its failure to apply for permit coverage, and its failure to comply with the above-listed conditions of the General Permit (or an individual NPDES permit) at the Facility, constitute violations of the General Permit and of Sections 301(a) and 402(p) of the Clean Water Act.

### **III.**

#### **PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS**

Almar Supplies, Inc., BML Consulting, LLC, and Rossana Bortone are the persons responsible for the violations alleged in this Notice. Baykeeper believes that Almar has operated the Facility for at least five years.<sup>48</sup> Almar has operational control over the day-to-day industrial activities at the Facility. Therefore, Almar is responsible for managing stormwater at the Facility in compliance with the CWA. Baykeeper hereby puts Almar on notice that if Baykeeper subsequently identifies additional persons as also being responsible for the violations set forth above, Baykeeper intends to include those persons in this action.

### **IV.**

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<sup>47</sup> See General Permit, Part VIII, Sector P.

<sup>48</sup> Almar registered with the New York State Department of State to conduct business in New York in 1989.

### **LOCATION OF THE ALLEGED VIOLATION**

The violations alleged in this Notice have occurred and continue to occur at the Facility located at 248-22 Brookville Boulevard, Queens, NY 11422. For clarity, the Facility location can be uniquely identified as block 13914, lot 1 in Queens County. Stormwater flows from the Facility into a separate storm sewer system that discharges into Jamaica Bay. The failure to develop and implement a pollution prevention plan and take the other required measures are violations occurring at the Facility.<sup>49</sup>

### **V.**

### **DATES OF VIOLATION**

Every day upon which Almar has failed to apply for permit coverage since it first commenced operations at the the Facility and discharged polluted stormwater is a separate violation of Sections 301(a) of the CWA and EPA's regulations implementing the CWA.<sup>50</sup> These days of violation have continued consecutively for at least five years, by which time Baykeeper believes Almar was operating the Facility.

Additionally, Almar has discharged from the Facility without a permit in violation of Section 301(a) of the CWA on every day since Almar commenced operations at the Facility on which there has been a measurable precipitation event or discharge of previously accumulated precipitation (i.e., snowmelt) over 0.1 inches.

Finally, if Almar seeks permit coverage for the Facility after receiving this letter but fails to fully comply with the requirements of the General Permit (or an individual permit), each day upon which Almar claims coverage under a NPDES permit but fails to comply with that permit will constitute a separate day of violation with respect to each unmet condition of that permit.

Almar is liable for the above-described violations occurring prior to the date of this letter and for every day after the date of this letter that these violations continue. In addition to the violations set forth above, this Notice covers all violations of the CWA evidenced by information that becomes available after the date of this Notice of Intent to File Suit.<sup>51</sup> These violations are

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<sup>49</sup> The federal courts have held that a reasonably specific indication of the area where violations occurred, such as the name of the facility, is sufficient and that more precise locations need not be included in the notice. See, e.g., *Natural Resources Defense Council v. Southwest Marine, Inc.*, 945 F. Supp. 1330, 1333 (S.D. Cal. 1996), aff'd 236 F.3d 985, 996 (9th Cir. 2000); *City of New York v. Anglebrook Ltd. Partnership*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995); *Assateague Coastkeeper v. Alan & Kristin Hudson Farm*, 727 F. Supp. 2d 433, 439 (D. Md. 2010); *United Anglers v. Kaiser Sand & Gravel Co.*, No. C 95-2066 CW, 1995 U.S. Dist. LEXIS 22449 at \*4 (N.D. Cal. Sept. 27, 1995).

<sup>50</sup> See 33 U.S.C. §§ 402(p)(3)(A) and (p)(4)(A) (requiring the establishment of industrial stormwater NPDES permits and of a permit application process).

<sup>51</sup> See, e.g. *Public Interest Research Grp. v. Hercules, Inc.*, 50 F.3d 1239, 1248-49 (3d Cir.1995) (a notice that adequately identifies specific violations to a potential defendant also covers repeated and related violations that the plaintiff learns of later. "For example, if a permit holder has discharged pollutant 'x' in excess of the permitted

ongoing, and barring full compliance with the permitting requirements of the Clean Water Act, these violations will continue.

## VI.

### **RELIEF REQUESTED**

Baykeeper will ask the court to order Almar to comply with the Clean Water Act, to pay penalties, and to pay Baykeeper's costs and legal fees.

First, Baykeeper will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d) and such other relief as permitted by law. Baykeeper will seek an order from the Court requiring Almar to obtain NPDES permit coverage and to correct all other identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Second, pursuant to Section 309(d) of the CWA,<sup>52</sup> each separate violation of the CWA subjects Almar to a penalty not to exceed \$37,500 per day for each violation that occurred prior to November 2, 2015, and up to \$52,414 per day for each violation that occurred after November 2, 2015.<sup>53</sup> Baykeeper will seek the full penalties allowed by law.

Third and lastly, pursuant to Section 505(d) of the CWA, Baykeeper will seek recovery of its litigation fees and costs (including reasonable attorney and expert witness fees) associated with this matter.

## VII.

### **PERSONS GIVING NOTICE**

The full name, address, and telephone number of the persons giving notice are as follows:

Raritan Baykeeper, Inc. (d/b/a NY/NJ Baykeeper).  
52 West Front Street  
Keyport, NJ 07735  
(732) 888-9870  
Attn.: Debbie Mans, Executive Director

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effluent limit five times in a month but the citizen has learned only of four violations, the citizen will give notice of the four violations of which the citizen then has knowledge but should be able to include the fifth violation in the suit when it is discovered.”).

<sup>52</sup> 33 U.S.C. § 1319(d); *see also* 40 C.F.R. § 19.4 (Adjustment of Civil Monetary Penalties for Inflation).

<sup>53</sup> 40 C.F.R. §§ 19.2 and .4.

## VIII.

### IDENTIFICATION OF COUNSEL

Baykeeper is represented by legal counsel in this matter. The name, address, and telephone number of Baykeeper's attorneys are:

Edan Rotenberg, Esq.  
Nicholas W. Tapert, Esq.  
Super Law Group, LLC  
180 Maiden Lane, Suite 603  
New York, New York 10038  
(212) 242-2355

## IX.

### CONCLUSION

The foregoing provides more than sufficient information to permit Almar to identify the specific standard, limitation, or order alleged to have been violated, the activities alleged to constitute violations, the person or persons responsible for the alleged violations, the locations of the alleged violation, the date or dates of such violations, and the full name, address, and telephone number of the person giving notice.<sup>54</sup>

If Almar has developed a SWPPP for the Facility, Baykeeper requests that Almar send a copy to the undersigned attorney.<sup>55</sup> Otherwise, Baykeeper encourages Almar to begin developing a SWPPP immediately after receiving this letter and ask that Almar please inform the undersigned attorney of its efforts so Baykeeper can work with Almar to avoid disputes over the contents of the SWPPPs.<sup>56</sup>

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<sup>54</sup> 40 C.F.R. § 135.3(a).

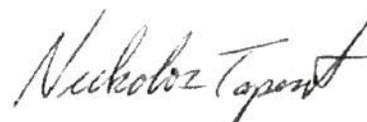
<sup>55</sup> Note that under Part III.D.2 of the General Permit, the owner or operator of a facility "must make a copy of the SWPPP available to the public within 14 days of receipt of a written request."

<sup>56</sup> Baykeeper will not send a new notice letter in response to any effort Almar makes to come into compliance with the Clean Water Act after receiving this letter, for example, by developing a SWPPP. The federal courts have held that citizens sending a notice letter are not required to identify inadequacies in compliance documents that do not yet exist and are "not required to send a second notice letter in order to pursue specific claims regarding the inadequacies of [a defendant's] post-notice compliance efforts." *WaterKeepers N. Cal. v. AG Indus. Mfg.*, 375 F.3d 913, 920 (9th Cir. 2004). *See also Natural Resources Defense Council v. Southwest Marine, Inc.*, 236 F.3d 985, 997 (9th Cir. 2000) ("subject matter jurisdiction is established by providing a notice that is adequate on the date it is given to the defendant. The defendant's later changes . . . do not retroactively divest a district court of jurisdiction under 33 U.S.C. § 1365(b)."); *City of New York v. Anglebrook L.P.*, 891 F. Supp. 900, 908 (S.D.N.Y. 1995) (plaintiff's notice letter based on inadequacies of defendant's original SWPPP held sufficient to establish court's jurisdiction, even though defendant later prepared a revised SWPPP).

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During the sixty-day notice period, Baykeeper is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of protracted litigation. If Almar wishes to pursue such discussions, please contact the undersigned attorney immediately so that negotiations may be completed before the end of the sixty-day notice period. We do not intend to delay the filing of a complaint in federal court, regardless of whether discussions are continuing at the conclusion of the sixty days.

Very truly yours,



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cc:

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